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ELECTION COMMISSION, INDIA
NOTIFICATION

New Delhi, the 17th January 1953

S.R.O. 154.—WHEREAS the election of Shri Nihal Uddin, as a member of the Legislative Assembly of the State of Uttar Pradesh from the Budaun North Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Asrar Ahmad son of Shri Ghulam Mohammad, Civil Lines, Budaun;

AND WHEREAS the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT BAREILLY

PRESENT:—Sri D. S. Mathur, I.C.S., *Chairman.*
Sri D. R. Misra. } *Members.*
Sri J. K. Kapoor. }

ELECTION PETITION No. 162 of 1952.

Sri Asrar Ahmad—*Petitioner.*

Versus

1. Sri Nihal Uddin.
2. Sri Makhan Singh.
3. Sri Madho Ram Rastogi.
4. Sri Harish Chandra Singh.
5. Sri Har Saran Lal.
6. Sri Sahib Singh.
7. Sri Jagan Prasad Vakil.
8. Sri Hafiz Ali Ahmad.

} *Respondents.*

Sri Iqbal Ahmad, Advocate, assisted by Sri Man Mohan Lal Mathur, Advocate, and another appeared for the petitioner.

Sri Fazle Haque, Pleader, appeared for Sri Nihal Uddin, respondent No. 1.

Sri Hafiz Ali Ahmad, respondent No. 8, in person.

JUDGMENT

This is a petition under section 81 of the Representation of the People Act, 1951, (Act XLIII of 1951) by Asrar Ahmad to have the election of Nihal Uddin, respondent No. 1, to the Uttar Pradesh Legislative Assembly, held on the 28th of January, 1952, in the Budaun (North) 113 Constituency declared wholly void on the ground that the result of the election had been materially affected by the improper rejection of the petitioner's nomination.

The facts of the case are as below:—

Mohammad Aijaz Ahmad and Mohammad Mukhtar Ahmad, brothers of the petitioner, migrated to Pakistan sometimes in July 1948; while he, his eldest brother Mohammad Intizar Ahmad and his maternal uncle Abdul Ghani continued to reside in India. One of his relations, Abdul Hai, had gone to Pakistan but returned to India within 3 to 5 months. Mohammad Aijaz Ahmad and Mohammad Mukhtar Ahmad were treated as evacuees, and on the 18th of September, 1949, the Tahsildar Sadar, Budaun, under orders of the Deputy Custodian of Evacuee Property (Collector) took into his possession certain shares in buses, trucks, motor-car, motor-cycle and a motor with a flour machine, the details of which are contained in the Supurdnama, Ex. 14. All these properties were left in the custody of the petitioner and his brother, Mohammad Intizar Ahmad, to be produced before the Deputy Custodian in the same condition whenever ordered. On the 7th of January 1951, the petitioner and his brother, Mohammad Intizar Ahmad, executed the Supurdnama, Ex. A 1 whereby they agreed to hold the properties for and on behalf of the Deputy Custodian (Collector), subject to certain conditions detailed therein, and agreed to pay Rs. 100 per month per full share in lorry or truck for its use. There is no clause in the Supurdnama, Ex. A 1, to give it a retrospective effect, but the petitioner has deposed that he had started plying the buses and trucks on hire a few months after their attachment on the verbal authority given by the Custodian.

The petitioner appealed against the order of attachment, and under order dated the 16th of January, 1952, Ex. 9, the Custodian of Evacuee Property for Uttar Pradesh released the total interest in one lorry and certain shares in a few others. The petitioner has now moved the Custodian General of Evacuee Property by way of revision, and the revision application is still pending. The petitioner claims that none of the attached properties belongs to Mohammad Aijaz Ahmad and Mohammad Mukhtar Ahmad, evacuees, and that they all belong to him and to his relations.

The petitioner was an elector in the Budaun (North) Constituency (*vide* extract Ex. 1) and filed his nomination paper for a seat in the Uttar Pradesh Legislative Assembly from this Constituency. All the eight respondents were also candidates for election and filed their nomination papers. At the time of the scrutiny of nomination papers, on the 27th of November, 1951, Nihal Uddin, respondent No. 1, filed objections to the nomination of the petitioner and of Hafiz Ali Ahmad, respondent No. 8. Both the objections were allowed by the Returning Officer on the 29th of November, 1951. Thus the petitioner could not stand for election. Nihal Uddin, respondent No. 1, secured the highest votes in the election, held on the 28th of January, 1952, and was on the 9th of February, 1952, declared to have been duly elected, *vide* the declaration of the Returning Officer in Form 16, under Rule 50, Ex. 2. In due course Asrar Ahmad moved the present election petition to have the election of respondent No. 1 set aside and the election declared to be wholly void.

The chief objections raised against the nomination of the petitioner were that he had a share and interest in a contract for the execution of works and performance of services undertaken by the Uttar Pradesh Government, inasmuch as he was carrying on the business of bus service in respect of certain buses which were in whole or in part evacuee properties; and that the buses were run and managed on behalf of the Custodian for the Uttar Pradesh under a contract between the petitioner and the Assistant Custodian of Evacuee Property, Budaun. Ex. 3 is the copy of this objection. In support of the objection respondent No. 1 filed an affidavit, Ex. 4, on the 27th of November, 1951. It appears that the petitioner filed a counter-affidavit, but under orders dated the 29th of November, 1951, Ex. 5, the Returning Officer upheld the objections, declared the petitioner to be disqualified from contesting the election to the Uttar Pradesh Legislative Assembly and rejected his nomination. In other words, according to the Returning Officer, the petitioner had "share and interest in a contract for the execution and performance of service, *viz.*, the management of evacuee property undertaken by the U. P. Government." The petitioner challenges the validity of this order of the Returning Officer on the grounds that there was no contract within the meaning of section 7(d) of the Representation of the People Act, 1951; that there was no contract for the 'performance of any service' between the petitioner and the Uttar Pradesh Government within the meaning of the said clause of section 7; that in any case there was no contract for the performance of any service undertaken by the Uttar Pradesh Government; that the contract, if any, was between the petitioner and the Deputy Custodian of Evacuee Property who entered into a contract on his own behalf and not on behalf of any Government; and that even if the Deputy Custodian entered into the alleged contract on behalf of any Government, that

Government was the Government of India and not the Uttar Pradesh Government Nihal Uddin, respondent No. 1, on the other hand, contends that on the day of nomination the petitioner had a share and interest in an undertaking for the execution of works and performance of services undertaken by the Uttar Pradesh Government and as such held an office of profit under the Uttar Pradesh Government by carrying on the business of evacuee buses; that the Evacuee Department was managing the evacuee properties under the supervision, direction and control of the Uttar Pradesh Government; and that the petitioner was acting for and as the agent of the Custodian of Evacuee Property for Uttar Pradesh.

Nihal Uddin, respondent No. 1, who succeeded in the election, is the only contesting respondent. Hafiz Ali Ahmad, respondent No. 8, has supported the petitioner's claim, while other respondents, Nos. 2 to 7, have not put in their appearance.

On the pleadings of the parties the following issues were framed:--

1. Whether Sri Hafiz Ali Ahmad, respondent No. 8, was a necessary party to the petition? If not, its effect?
2. Whether the nomination papers of the petitionr were improperly rejected under section 7(d) of the Representation of the People Act, XLIII of 1951?
3. If so, whether the result of the election has not been materially affected by the improper rejection of the petitioner's nomination papers?

Issue No. 1.—Section 82 of the Representation of the People Act, 1951, lays down as to who are the necessary parties to the petition. It provides that a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election. The term 'duly nominated' has not been defined in the Representation of the People Act, 1951, but would be deemed to include those whose nominations were held to be proper. The Returning Officer had rejected the nomination of Hafiz Ali Ahmad, respondent No. 8; and he cannot consequently be deemed to be a duly nominated candidate. He was, therefore, not a necessary party to the petition, but he could under section 90(1) of the Act, within 14 days of the publication of a copy of the petition in the Official Gazette, apply to be joined as a respondent and he would have been so arrayed on furnishing security under section 119 of the Act as may be directed by the Tribunal. Thus even though respondent No. 8 was not a necessary party, he could be impleaded as a respondent on his making an application after the publication of the election petition in the Official Gazette. Therefore, the defect of misjoinder of this respondent is not of any significance. Further, an objection of misjoinder of parties is to be raised by the party who has been wrongly and unnecessarily impleaded and not by others, who would not at all be affected as a result of such a misjoinder.

We are, therefore, of opinion that Hafiz Ali Ahmad was not a necessary party to the petition; but his being joined as a respondent is not fatal to the petition and will not render it defective in such a way as to make us dismiss it on this preliminary point.

Issue No. 2.—Every person fulfilling the provisions of Article 173 of the Constitution of India is qualified to be chosen to fill a seat in the Legislature of a state unless he is disqualified under Articles 190 and 191 of the Constitution of India, or under any law made by Parliament thereunder. It is not challenged that the petitioner is a citizen of India, is not less than 25 years of age and possesses such other qualifications as are prescribed under the law. Article 190 is not applicable to his case. Consequently, the petitioner would be eligible to be chosen to fill a seat in the Uttar Pradesh Legislative Assembly unless he was disqualified under Article 191 of the Constitution of India or the law framed thereunder, *i.e.*, the Representation of the People Act, 1951.

Respondent No 1 had suggested that the petitioner held an office of profit; but this point was not pressed at the later stage of the hearing of this petition. He had originally indicated that a person deriving any kind of benefit or profit from the Government would be deemed to hold an office of profit and would consequently be disqualified under Article 191(I)(a) of the Constitution of India. The actual words used in the said clause of Article 191 are 'holds any office of profit under the Government of India or the Government of any State.' Every person drawing a benefit from the Government does not necessarily hold an office of profit. Such an office can be deemed to be held by Government servants or by persons holding some office under the Government, *e.g.*, its agent or manager appointed to look after properties vested in or belonging to the Government. Thus the petitioner can be deemed to hold an office of profit only if while running the evacuee buses he was acting as an agent or manager of the Custodian of Evacuee Property

on behalf of the Government. Such is not the case in the present instance. An agent or manager has to render account to his master, and can claim salary or remuneration only for his services. The petitioner was not liable to render account to the custodian; nor was he entitled to any salary or remuneration. He was to pay at a fixed rate for the use of evacuee buses or trucks, and was himself to benefit out of the profits and to bear losses, if any. In other words, he did not hold any office of profit.

The additional disqualifications prescribed by the Parliament under law are contained in section 7 of the Representation of the People Act, 1951. Clause (d) of this section applies to the present case. The relevant portion of this clause runs as below:—

> "A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—
>
> (d) If..... he has any share or interest in a contract.....for the execution of any works or the performance of any services undertaken by, the appropriate Government;"

The term 'appropriate Government' has been defined in section 9 of the Representation of the People Act, 1951, as the Central Government in relation to either House of Parliament and the State Government in relation to the Legislative Assembly or Legislative Council of a State. The petitioner was a candidate for election to the Uttar Pradesh Legislative Assembly. Consequently, in his case, the appropriate Government would be the Uttar Pradesh Government. In other words, therefore, the petitioner would be disqualified for being chosen as, and for being, a member of the Uttar Pradesh Legislative Assembly, if he had any share or interest in a contract for the execution of any works or the performance of any services undertaken by the Uttar Pradesh Government.

The main ingredients of section 7(d) of the Representation of the People Act, 1951, are—

(a) The person should have a share or interest in a contract;

(b) the contract should be for the supply of goods, or for the execution of any works or for the performance of services; and

(c) the goods are to be supplied to the appropriate Government, or the execution of works or the performance of services are undertaken by the appropriate Government.

If either of these ingredients are not fulfilled, a person would not be disqualified under section 7(d) of the Act.

The petitioner had not contracted for the supply of goods or for the execution of any work. Consequently it has only to be considered if he had so contracted for the performance of services undertaken by the Uttar Pradesh Government. In case the services had not been undertaken by the Uttar Pradesh Government, the petitioner would not be disqualified to stand for election to the Uttar Pradesh Legislative Assembly. Thus the first point for consideration is if the services had been undertaken, if at all, by the Uttar Pradesh Government or by the Central Government.

The petitioner's case is that the buses, trucks and other properties taken into possession on behalf of the Deputy Custodian of Evacuee Property in September 1949 did not at all belong to the evacuees but were owned by the petitioner and other persons residing in India, and that consequently the contract (Supurdnama), Ex. A1, was ineffective and could not create any relationship between him and the Custodian or the Government. For the purposes of this petition it is not necessary to give any finding on this point, as in our opinion the appropriate Government is not and cannot be deemed to be the Uttar Pradesh Government.

The services undertaken by the appropriate Government are said to be the administration of evacuee property, *i.e.*, the property of persons who have migrated to Pakistan and have been declared or treated to be evacuees. On the date of the filing of nomination papers in November 1951 the Act applicable to the administration of such properties was the Administration of Evacuee Property Act, 1950 (Act No. XXXI of 1950), which is a Central Act having been passed by the Parliament. (To avoid the possibility of any confusion in understanding whether any Act or Ordinance referred to in this judgment was Central or was passed by a State, it may be noted that the Central Acts or Ordinances will not be prefixed by any word while the State Acts or Ordinances will be prefixed by the name of the State, *i.e.* for the Uttar Pradesh by its full name or by its abbreviation

U.P.). The earlier Acts or Ordinances of the Uttar Pradesh Government and of the Central Government had by then ceased to have any effect or had been specifically repealed by the above Act. Under the Administration of Evacuee Property Act, 1950, all the powers to make rules or to give directions to carry out the purposes of the Act were retained by the Central Government. Only limited powers, *e.g.*, the appointment of the Custodians, the distribution of work among them and the maintenance and audit of the accounts were given to the State Government. To make this point clear we would refer to the sections of the Act. Section 56(1) gives exclusive powers to the Central Government to make rules to carry out the purposes of this Act. The matters on which the rules could be so framed by the Central Government are detailed in sub-section (2) of the said section, and include all the matters necessary for holding an enquiry under the Act and for properly securing, administering, preserving and managing the evacuee properties. It may be noted that this list is not exhaustive but is in one way illustrative. The State Government was, however, given powers to make rules on matters enumerated in sub-section 3 of section 56. These matters are as below:—

(a) the terms and conditions of service of the Custodian and other officers appointed under this Act for the furnishing of security by them;

(b) the work to be performed by the Custodian and the Additional, Deputy and Assistant Custodian;

(c) the delegation of powers of the Custodian to the Additional, Deputy or Assistant Custodian;

(d) the fees payable to the Custodian for the management and disposal of any property vested in him and the manner in which such fees shall be paid;

(e) the persons by whom and the times at which books of account maintained under this Act may be inspected and audited.

It will be observed that all these matters are connected with the appointment of the Custodians, the distribution of work among the different custodians, the delegation of powers of the Custodian, the fees payable for the management and disposal of properties vested in the Custodian, the mode of the realisation and the inspection and audit of accounts maintained by the Custodians. All these matters on which the State Government can frame rules have nothing to do with the actual administration of evacuee properties. It may further be observed that it is the Central Government which can under section 53 give directions to any State Government as to carrying into execution in the State of any of the provisions contained in the Act or of any rules or orders made thereunder, or can pass orders or issue directions under section 54 to the Custodian for the purpose of regulation the administration of any property which has vested in the Custodian under the provisions of the Act. No such power has been given to the State Government. Consequently, the State Government have no hand in the Administration of evacuee properties. In this connection it may also be added that it is the Central Government which can exempt any person or class of persons or any property or class of property from the operation of all or any of the provisions of the Act (section 52); or can grant a certificate for the restoration of evacuee property [Proviso to section 16(1)]. The powers under section 16 can, however, be exercised by any person authorised by the Central Government in that behalf.

The rule making powers of the State Government detailed in section 56(3) of the Act are in consonance of the statutory powers provided in the earlier sections of the Act. Section 6 provides for the appointment of Custodians and the distribution of work among them. It lays down that a Custodian for the State and as many Additional, Deputy or Assistant Custodians of Evacuee Property as may be necessary for the purpose of discharging the duties imposed on the Custodian by or under the Act would be appointed by the State Government in consultation with the Custodian-General; and that the State Government can, by general or special order, provide for the distribution of work among the Additional, Deputy and Assistant Custodians. Section 15(3) provides for the inspection and audit of accounts. The accounts are to be so audited at such intervals and by such persons as may be prescribed by the State Government. Similarly, under section 51(1) the scale of fees payable to the Custodian for the management or disposal of any property vested in him is to be fixed by the State Government.

In addition, the State Government has the power to sanction prosecution of persons infringing the provisions of the Act (section 38); to nominate District Judges for hearing of appeals under section 25(2) of the Act and to define the local limits of their jurisdiction; and to order divesting of any property belonging to a joint Stock Company which had vested in any person exercising the

powers of a Custodian under any law previously in force [section 8(3) of the Act]. The first two powers have no direct connection with the actual administration of evacuee property. Section 8(3) had probably to be incorporated in the Act so that Evacuee properties covered by the definition as contained in clause (2) (d) (ii) of the United Provinces Administration of Evacuee Property Ordinance, 1949, (U. P. Ordinance No. 1 of 1949), and not covered by the definition as contained in section 2(f) (ii) of the Act of 1950, may not be released or divested unless so authorised by the Government which had directed the vesting of such properties in the then Custodian.

A reference to the State Government in sections 47 and 48 of the Act of 1950 cannot indicate that the administration of evacuee property was undertaken by the State Government. Section 47 is a general one and was framed to avoid institution of suits against the governments, the Custodian-General or the Custodian in respect of acts done in good faith and in pursuance of the Act or any rules or orders made thereunder. Section 48 refers to the recovery of amounts due to the State Government or to the Custodian, and not to the Central Government, for the simple reason that no amounts would be due to the Central Government in connection with or as a result of the management of evacuee properties.

The Custodians act independently of State Government even though they are appointed by such Government. Under section 6 of the administration of Evacuee Property Act, 1950, all Custodians, Deputy or Assistant Custodians of Evacuee Property are to discharge duties imposed on them by or under this Act under the general superintendence and control of the Custodian-General while the Additional, Deputy and Assistant Custodians under the general superintendence and control of the Custodian for the State. The State Government can, however, provide for the distribution of work among them. Similarly, section 10 lays down the powers and duties of the Custodian which are subject to the provisions of any rules which may be made in that behalf. As remarked previously, such rules can be framed only by the Central Government and not by the State Government. Consequently, the Custodian does not in any way take orders from the State Government in the actual administration or management of the evacuee property. The orders passed by the Custodian are final, unless modified or altered in appeal or revision by the Custodian-General or the District Judge, as the case may be (section 28).

Lastly, a reference may be made to the rules framed by the Central Government under section 56 of the Administration of Evacuee Property Act, 1950. A custodian can appoint a Supurdar under rule 11 on his furnishing security in Form No. 5. The first paragraph of this Form runs as below:—

> "Know all men by these presents that we .....(Supurdar) and .....(Surety) do hereby bind ourselves and each of us, our and each of our heirs, executors and administrators to pay to the President of India on demand the sum of Rs. .....dated ..... day of ....."

The Supurdar thus binds himself to the President of India. In case the property was administered by the Custodian on behalf of the State Government, the Supurdars or sureties would have been asked to bind themselves to the Governor of the State and not to the President of India. Our attention has also been drawn to the printed Forms issued for use by the Custodians of Evacuee Property sometimes before January, 1950, when the Administration of Evacuee Property Ordinance, 1949 (XXVII of 1949) the provisions of which are similar to the Act of 1950 was in force. All these Forms bear the heading of Government of India, Ministry of Rehabilitation. Similarly, under the bond in Form No. 5, under the then rule No. 10 framed under the Ordinance of 1949, the Supurdar or surety bound himself to the Governor-General of India. The heading and the contents of these Forms also lead us to the same inference.

At this place a reference may be made to the Memorandum of the Budget Estimates for the year 1952-53, of the Government of Uttar Pradesh, as presented to the Legislature. At page 43 under the head 'Miscellaneous', it was noted as below:—

> "The income from fees realized by the Custodian of Evacuee Property is expected to be higher by 1,00, but as this will not fully cover the expected increase in expenditure on administration of evacuee property, a contribution of 1,14, more will be payable by the Government of India according to the existing arrangement under which the balance of expenditure on the administration of evacuee property not covered by the income from Custodian's fees should be met out of contributions to be made by the Government of India."

Thus the excess expenditure, *i.e.* the expenses exceeding the income from Custodian's fees is met by the Government of India and not by the Uttar Pradesh Government. This would be only if the administration of evacuee property is in fact in the hands of the Government of India, while the Government of Uttar Pradesh simply acts as the agent of the former Government. Similarly, it would appear from the figures contained in the last two columns at pages 263 and 337 of the Detailed Estimates and Grants for the year 1952-53, of the Government of Uttar Pradesh, as presented to the Legislature, that the revised estimate of expenditure in connection with the administration of evacuee property for the year 1951-52 and the Budget estimate for the year 1952-53 were 8,90,800 and 8,62,300 respectively. Similar figures of fees realized by the Custodian of Evacuee Property were 4,75,000 and 5,25,000 respectively. The contributions from the Government of India for the two years were estimated to be 4,15,800 and 3,37,300. Thus th totals of the revised estimate of income for the year 1951-52 and of Budget estimate for the year 1952-53 under this head come to 8,90,800 and 8,62,300 respectively, which are the same as the revised estimate of expenditure in connection with the administration of evacuee property for the year 1951-52 and Budget estimate for the year 1952-53.

To sum up, the Administration of Evacuee Property Act, 1950, (Act No. XXXI of 1950), which was in force on the date of nomination, the rules framed thereunder, the forms prescribed and also the memorandum on the Budget Estimates and the Detailed Estimates and Grants for the year 1952-53 of the Government of Uttar Pradesh, as presented to the Legislature, indicate that the administration of evacuee property was undertaken by the Central Government and that any excess expenditure incurred by the Government of Uttar Pradesh was to be met by the Central Government and was not to be borne by the Governmet of Uttar Pradesh.

As against this, respondent No. 1 has strongly urged that at least in the present case the administration of the evacuee properties was undertaken and was actually done by the Government of Uttar Pradesh through the Custodian of Evacuee Property; and he places reliance upon the conduct of the petitioner, certain provisions of the previous Acts and Ordinances regarding the administration of evacuee property, and the circumstances to be detailed here-in-below. It was, consequently, contended that the evacuee buses were run by the petitioner on behalf of the Government of Uttar Pradesh.

(a) The administration of evacuee property falls under item 41 of the Concurrent List (No. III) of the Seventh Schedule of the Constitution of India. It was thus suggested that the State Government had the power to make laws and to issue directions for the custody, management and disposal of evacuee property.

(b) The evacuee properties were being managed by persons appointed by the State Government and not by the Government of India. It was thus contended that the Custodians were acting for the State Government.

(c) The evacuee properties vested in the Custodian under the provisions of the United Provinces Administration of Evacuee Property Ordinance, 1949 (U.P. Ordinance No. 1 of 1949). It was contended that the properties which vested in the State of Uttar Pradesh would continue to vest in that State even after the passing of the Central Ordinances and Act.

(d) The evacuee properties were taken into possession by the Deputy Custodian of Evacuee Property and were left in the charge of the petitioner and his brother on the 18th of September, 1949, when the State Government was responsible for the administration of evacuee properties, even though the U.P. Ordinance No. 1 of 1949 had been replaced by the Administration of Evacuee Property (Chief Commissioner's Provinces) Ordinance, 1949 (Ordinance No. XII of 1949) as amended by the Administration of Evacuee Property (Chief Commissioner's Provinces) Amendment Ordinance, 1949 (Ordinance No. XX of 1949).

(e) Though the formal agreement (Supurdnama), Ex. A 1, was executed on the 7th of January, 1951, the petitioner and his brother had begun to run the evacuee buses when the Ordinance No. XII of 1949 as amended by Ordinance No. XX of 1949, empowering the State Government to manage the evacuee properties, was in force. It was thus contended that the agreement of the petitioner was with the Government of Uttar Pradesh and any future legislation would not affect the rights and liabilities of the petitioner.

(f) The agreement (Supurdnama), Ex. A 1, dated the 7th of January, 1951, also indicates that the agreement was with the State of Uttar Pradesh and not with the Central Government.

We shall take up these points one by one.

It is true that as laid down in Article 246 (2) of the Constitution of India the Legislature of any State specified in part A of the First Schedule has also power to make laws with regard to any of the matters enumerated in List III (Concurrent List), but the provisions of law made by the Legislature of a State if repugnant to any provision of a law made by Parliament which Parliament is competent to enact would be void to the extent of the repugnancy [Article 254 (1) of the Constitution of India]. The law made by the Legislature of a State if repugnant to any provision of the law made by Parliament would prevail only if it comes within sub-clause (2) of Article 254 of the Constitution of India. At present there is no law of the Uttar Pradesh Legislature in force, and consequently sub-clause (2) of Article 254 would be inapplicable. In other words, therefore, the State Legislature cannot pass any law repugnant to the enactment made by the Parliament, *i.e.* against the provisions of the Administration of Evacuee Property Act, 1950 (Act No. XXXI of 1950). The administration evacuee property on the date of nomination would, therefore be in accordance with this Act of 1950, and consequently such administration would be deemed to have been undertaken by the Government of India and not by the Government of Uttar Pradesh. In this connection it may be observed that the Central Government had taken over the administration of evacuee properties in the State of Uttar Pradesh on the request of all the Chambers of the Provincial Legislatures of the United Provinces (Uttar Pradesh). This would appear from the preamble to the administration of Evacuee Property (Chief Commissioner's Provinces) Amendment Ordinance, 1949 (Ordinance No. XX of 1949). The preamble runs as below:—

> "Whereas in pursuance of section 103 of the Government of India Act, 1935 (26 Geo 5, c.2), resolutions have been passed by all the Chambers of the Provincial Legislatures of Madras and the United Provinces to the effect that certain matters relating to the administration of Evacuee property in the said Provinces, in so far as they are covered by any of the matters enumerated in the Provincial Legislative List, should be regulated by Act of the Dominion Legislature;"

Thus even if the administration of evacuee property was originally undertaken by the Government of Uttar Pradesh, it would with effect from the date of the above Ordinance become subject to Central legislation and if the Central Ordinances or Act suggest that the administration is in the hands of the Central Government, the undertaking would thereafter be deemed to be of the Government of India and not of the Government of Uttar Pradesh.

This question can be considered from another aspect also, whether in view of the Administration of Evacuee Property Act, 1950, the executive powers of the State extended to the management of evacuee properties or not. Articles 73 and 162 of the Constitution of India lay down the extent of the executive powers of the Union and the State respectively. The proviso to Article 73 (1) provides that the executive power referred to in sub-clause (a) shall not extend in any State specified in Part A of the First Schedule to matters with respect to which the Legislature of the State has also power to make laws, save as expressly provided in this Constitution or in any law made by Parliament. In other words, the executive powers of the Union can extend to the matters enumerated in the Concurrent List of the Seventh Schedule only when it is so expressly provided in the Constitution or in any law made by the Parliament. Similarly, it is provided in proviso to Article 162 that the executive powers of the State with regard to such matters shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by the Parliament upon the Union or authorities thereof. If these two Articles are read together, it would be clear that the executive power of the State shall not extend to the matters enumerated in the Concurrent List, if such powers have been exclusively given to the Union under the Constitution or by any law made by the Parliament. In the present case, the Parliament passed the Administration of Evacuee Property Act, 1950, and gave all the powers of administration and management of evacuee properties to the Government of India. Consequently, in view of the proviso to Article 162, the executive power of the State as regards the management or administration of evacuee property would be deemed to have been completely taken away; and the administration of evacuee properties will be a matter within the exclusive jurisdiction of the Government of India. In this connection

reference may also be made to Articles 256 and 257 of the Constitution of India. Article 256 lays down that the executive power of every State shall be so exercised as to ensure compliance with the laws made by the Parliament, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Similarly, Article 257 (1) of the Constitution provides that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. In other words therefore, the Act of the Parliament would prevail and the State Government cannot exercise its executive powers contrary to this law.

There is no bar to the Central Government exercising its executive powers through the officers or authorities subordinate to the Government of a State. On the other hand Article 258 of the Constitution of India clearly provides for the exercise of executive powers by the President through the Government of a State or officers or authorities subordinate thereto. Of course, as laid down in sub-clause (3) of this Article, the Government of India would be liable to pay to the State such sum as may be agreed upon, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra cost of administration incurred by the State in connection with those powers and duties. It was probably in accordance with this Article that the Government of India had agreed to reimburse the Government of Uttar Pradesh the extra expenditure incurred in the administration of evacuee property. Thus if the Government of India were to exercise its executive powers through the officers of the State, the undertaking would continue to be of the Government of India and not of that State.

The third contention regarding the continuance of the vesting of evacuee properties in the Government of Uttar Pradesh is based upon wrong interpretation of the provisions of the Administration of Evacuee Property Act, 1950. Sections 8(2) and 58 (3) of the Act are material on this point. Section 8(2) provides that where immediately before the commencement of this Act, any property in State had vested as evacuee property in any person exercising the powers of Custodian under any law repealed hereby, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act, and shall continue to so vest. The Administration of Evacuee Property Act, 1950, had repealed the Administration of Evacuee Property Ordinance, 1949 (XXVII of 1949); while this Ordinance XXVII of 1949 repealed the Administration of Evacuee Property (Chief Commissioner's Provinces) Ordinance, 1949 (XII of 1949), as amended by Ordinance XX of 1949, which was in force in the United Provinces (Uttar Pradesh) after the expiry of the United Provinces Administration of Evacuee Property Ordinance, 1949 (U.P. Ordinance 1 of 1949). In all the Central Ordinances there was a provision similar to section 8(2) of the Administration of Evacuee Property Act, 195); for example, clause 5 in Ordinance XII of 1949 and clause 8(2) in Ordinance XXVII of 1949. Thus the property which had vested in the Custodian appointed under the Uttar Pradesh Administration of Evacuee Property Ordinance, 1949 (U.P. Ordinance No. 1 of 1949), would now be deemed to have vested in the Custodian appointed under the Administration of Evacuee Property Act, 1950. Similarly, amended section 58 (3) of the Administration of Evacuee Property Act, 1950, runs as below:—

> "The repeal by this Act of the Administration of Evacuee Property Ordinance, 1949 (XXVII of 1949), or the Hyderabad Administration of Evacuee Property Regulation (Hyderabad No. XII of 1359 F) or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers, conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken."

A similar provision exists in the earlier Central Ordinances, for example, clause 55(3) in Ordinance XXVII of 1949 and clause 41 in Ordinance XII of 1949 as amended by Ordinance XX of 1949. In other words, the vesting of properties in the Custodian under the U.P. Ordinance No. 1 of 1949 and the taking of any action under this U.P. Ordinance or under Central Ordinances will now be deemed to be or to have been done under the Act of 1950. The Custodians are at present acting on behalf of the Government of India, and consequently the vesting of properties and all the actions taken by them would be on behalf of the Central Government.

The fact that the evacuee properties were taken into possession and given in the Supurdgi of the petitioner and his brother at a time when the State Government was managing such properties under the powers conferred by the Administration of Evacuee Property (Chief Commissioner's Provinces) Ordinance XII of 1949, as amended by Ordinance XX of 1949, will not, for reasons already discussed above, make any difference. The taking into possession and the handing over of evacuee properties to the petitioner and his brother would, in view of section 58 (3) of the Administration of Evacuee Property Act, 1950, and the corresponding clauses of other Ordinances, be deemed to be under the Act of 1950 and not under the U.P. Ordinance 1 of 1949.

It is not clear when the petitioner and his brother had started running the evacuee buses under the verbal authority given by the then Custodian; but even if it was while Ordinance XII of 1949 as amended by Ordinance XX of 1949 was in force, this contract would, in view of section 58(3) of the Administration of Evacuee Property Act of 1950 and similar clauses of the earlier Ordinance, be under the Act of 1950, *i.e.* on behalf of the Government of India.

The relevant portion of the agreement (Supurdnama), dated 7th January, 1951, Ex. A 1 runs as below:—

> "We .. do hereby take it to my possession the under mentioned alleged property of the evacuee... ....entrusted to my charge by the Collector and the Deputy Custodian, Budaun, which property has by virtue of the U.P. Administration of Evacuee Property No. 1 of 1949 vested in the Custodian and powers of management of which have under clause 9 of the said Ordinance been (dedicated?) delegated to the Collector and Deputy Custodian, Budaun, I, therefore, hold the said property for and on behalf of the said Collector and Deputy Custodian on the following conditions:—

The words 'by virtue of the U. P. Administration of Evacuee Property No. 1 of 1949' simply qualify the property and not that the Deputy Custodian was then taking action under the U.P. Administration of Evacuee Property Ordinance, 1949, which had by then ceased to have any effect. Similarly, a reference to clause 9 of the Ordinance, which was no longer in force having expired before the Central Ordinances became applicable to the Uttar Pradesh, would not in any way affect the liabilities of the petitioner and his brother. Their liabilities would be as under the law then in force. Section 95 of the Indian Evidence Act, 1872, lays down that when language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense. A reference to the U.P. Ordinance 1 of 1949 was unmeaning in reference to the facts existing on the date of the agreement. Consequently, the petitioner could now give evidence to show that the reference was to the Administration of Evacuee Property Act, 1950, the Act which inforce at the time of the agreement. A judicial notice can also be taken of these facts, namely, that in January, 1951 the only Evacuee Property Act in force was the Central Act of 1950. In other words, therefore, the petitioner and his brother bound themselves to the Custodian on behalf of the Government of Indian and not on behalf of the Government of Uttar Pradesh.

On consideration of the provisions of the Constitution of India and Laws and Ordinances regarding the administration of evacuee property, we have no hesitation in holding that the administration of such properties was undertaken by the Government of India presuming that the Custodian was acting for one Government or the other. As the administration was so undertaken by the Government of India, the petitioner was disqualified from standing for either of the House of Parliament and not for the Legislative Assembly or the Legislative Council of Uttar Pradesh. The Returning Officer was, therefore, wrong in rejecting the petitioner's nomination to the Uttar Pradesh Legislative Assembly from Budaun (North) Constituency.

Issue No. 3.—During the arguments respondent No. 1 did not press this issue, and he conceded that the Tribunal could infer that the result of the election had been materially affected if it were of opinion that the petitioner's nomination paper had been improperly rejected. In the circumstances, it is not necessary to refer to the law and to the evidence on record on this point. However, it may be noted that the law on this point is virtually settled. In England an irrebutable presumption is drawn in favour of the petitioner, whenever a nomination is held to have been improperly rejected. The election is in all such cases declared wholly void. But the view taken by most of the Election Tribunals in India is that the presumption is rebutable and it lies heavily upon the respondent to rebut the presumption so raised. In the present case respondent No. 1, has not led any evidence. Consequently, the presumption has not been rebutted. We, therefore, hold that

the result of the election has been materially affected by the improper rejection of the petitioner's nomination and such an improper rejection wholly avoids the election.

Before concluding we would suggest on the same lines as was done as far back as in 1938 in the Multan Division Town Mohammedan Constituency Case that there should be a provision for the final decision of questions pertaining to the acceptance or rejection of nomination papers before the commencement of the polling, so that the successful candidate may not be deprived of the fruits of his success for no fault of his, in spite of all the expenses incurred and worry undergone, merely because the Returning Officer takes an erroneous view and improperly accepts or rejects a nomination.

As a result of our findings, the petition has to be allowed and the election declared wholly void. The costs are to follow the event, and we allow a lump sum of Rs 500 as costs payable to the petitioner by respondent No. 1.

We declare that the election held on the 28th of January, 1952, to the Uttar Pradesh Legislative Assembly in the Budaun (North) 113 Constituency be wholly void We order respondent No. 1 to pay to the petitioner a lump sum of Rs. 500 as his costs. The respondents shall bear their own costs.

BAREILLY; (Sd.) D. S. MATHUR, I.C.S.,
Chairman.

The 12th January 1953.

(Sd.) D. R. MISRA, *Member.*
(Sd.) J. K. KAPOOR, *Member.*
[No. 19/162/52-Elec.III.]

S.R.O. 155.—WHEREAS the election of Shri Uma Shanker Misra, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Sagri (West) Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act (XLIII of 1951), by Shri Mukti Nath Rai, son of Shri Deota Rai, Village Pachhkhora, P.O. Kandhrapur, District Azamgarh;

AND WHEREAS the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, GORAKHPUR

PRESENT

Sri Brij Narain, *Chairman.*

Sri Brij Behari Lal, Sri Sukhdeo Prasad } *Members.*

ELECTION PETITION NO. 199 OF 1952

Sri Mukti Nath Rai, *Petitioner.*

Versus

Sri Uma Shanker Misra & Others, *Respondents.*

JUDGEMENT

This is an election petition under section 81 of the Representation of the People Act, 1951 (hereinafter to be called "the Act") brought by Sri Muktinath Rai, praying that the election of the respondent No. 1, Sri Uma Shanker Misra, from Sagri (West) Constituency, District Azamgarh be declared void and the petitioner be declared duly elected from that Constituency, and in case this relief be not granted the election should be held to be wholly void and costs be awarded to the petitioner in full.

The petitioner claims to have been duly entered as an elector at No. 1085 in the electoral roll for the Patwari circle Jigina Karmanpur of the U.P. Assembly Constituency Sagri (West) District Azamgarh and he was duly nominated as a candidate for election to the U.P. Assembly from the said Constituency on November 27, 1951. The respondents Nos. 1 to 6 were also duly nominated, but the respondent No. 6 withdrew his candidature before November 30, 1951. The election was held on 25th January 1952 and the counting was done on 4th February 1952 when the results were declared and the respondent No. 1 was declared elected and his name was published in the U.P. Gazette in accordance with section 67 of the Act on February 26, 1952, as he secured 8128 votes as against 7248 votes secured by the petitioner. According to the petitioner, all the respondents Nos. 1 to 5 indulged in major and minor corrupt and illegal practices and they did not allow the election to be a free election and as undue influence, intimidation and coercion were practised by them on an extensive scale and the corrupt practice of bribery was also resorted to by them and the respondent No. 1 did not use the prescribed methods and forms during and in the course of his election, the result of election was materially affected. The petitioner has given details of major corrupt practices which are alleged to have been committed by the respondent No 1 and is contained in para. 15 of the petition. The respondent No. 1 is further alleged to have filed a return of election expenses which contained false entry of expenditure and which was not accompanied by declarations both by the candidate as well as an election agent, as required by section 76 of the Act read with rule 112 of the Representation of the People Rules, 1951. The respondent No. 1 has also been alleged to have obtained assistance from persons serving under Government and the details thereof are given in para. 24 of the Petition.

This election petition has been contested by Sri Uma Shanker Misra, respondent No. 1 but the other respondents have not filed any written statement. The respondent No. 1 has contended that the allegations in the petition are vague and indefinite and the petition should be dismissed as it does not comply with the provisions of section 80 and 83 of the Representation of the People Act. The allegation that the respondent No. 1 has been guilty of corrupt and illegal practices and the result of the election has been materially affected thereby has been emphatically and categorically denied. It has also been denied by this respondent that he offered gratification to nine persons named in para. 15(1) of the petition, or to any other voter The respondent No. 1 has urged that no fraud was practiced on the electors by him or his agents and it has further been denied that Deo Narain, Farid Uddin, Raghunath and Rameshar were panches of the Panchayat Adalat and they worked for this respondent. The allegations regarding false personation in para. 16 of the petition regarding polling Station Diwara Urdiha voter No. 1233 have also been denied. Finally this respondent has urged that he took every precaution that no breach of any provisions of the Representation of the People Act or the rules framed thereunder should occur in his election by him or his supporters.

The following Issues were framed on the pleadings of the parties:—

1. Whether the allegations in the petition are general, vague and indefinite? If so, its effect?
2. Whether the petition has not been properly framed?
3. Whether the respondent No. 1 resorted to major and minor corrupt practices, bribery, undue influence, intimidation in the course of the election proceedings? If so, has the result of the election been materially affected by the same?
4. Has the respondent No. 1 committed any breach of electoral laws and rules and has he not used the prescribed methods and forms during and in the course of his election? If so, its effect?
5. Whether the agents of the respondent No. 1 are guilty of corrupt practices relating to the election?
6. Was the respondent No. 1 an active perpetrator and accomplice in the corrupt practice, if any, committed by his agents?
7. Did the respondent No. 1 prompt his agents to indulge in corrupt practices?
8. Did the respondent No. 1 offer gratification, extend promise for employment to the electors for the purpose of inducing them to vote for him?
9. Whether the persons mentioned in para. 15(1) of the petition were given gratification by the respondent No. 1 with the object of inducing them to vote for him?
10. Did the respondent No. 1 entertain persons with food, cash, etc. with the object of securing their or their community votes?

11. Did the respondent No. 1 promise to give employment to the son of Ramanand Upadhya as bargain for the vote of his community?
12. Whether the respondent No. 1 carried on any false propaganda against the petitioner? If so, its effect?
13. Whether the respondent No. 1 or other respondents at any stage made a false propaganda that the petitioner had decided to withdraw from election? If so, its effect?
14. Whether the respondent No. 1 obtained the assistance of any Government servant in furtherance of the prospect of his election, if any, for securing votes?
15. Whether the panches and sarpanches of the Panchayati Adalat are Government servants?
16. Did any panch or sarpanch work as agent for the respondent No. 1?
17. Whether Katwaroo personated for Balli? If so, did he do so with the connivance of the respondent No. 1 and his agents? Is the petitioner entitled to raise this issue in this election petition?
18. Was the return of expenses filed by the respondent No 1 and not in accordance with law and rules?
19. Did not respondent No. 1 file his nomination papers according to law and rules in this regard?
20. Whether the agents of the respondent No. 1 appointed in accordance with section 46 of the Act?
21. Did any polling officer act in collusion with respondent No. 1 in matters of election?
22. Was not the ballot box of respondent No. 1 properly sealed at polling station Patwadh? If so, its effect?
23. Whether the list of particulars filed by the petitioner is fit to be rejected as it was filed after the prescribed period of limitation? If so, its effect?
24. Whether the said list of particulars is bad for want of verification?
25. Whether the Election Commission had no jurisdiction to entertain the said list?
26. Whether the respondent No. 1 himself took precautions that no breach of any provisions of the Representation of the People Act and rules framed thereunder be committed by him or his agents?
27. Whether the result of the election has been affected by the breach of any of the sections of the said Act and rules?
28. Whether the result of election has been affected by the breach of any
29. Did the respondent No. 1 hold out a promise to distribute 25 acres of land and one cow to every one, if he was returned to Legislature?

FINDINGS

Issues Nos. 23, 24 *and* 25—

The parties have advanced arguments on these issues first, as the respondent No. 1 had filed application No. 27C, praying that it be ordered that the list of corrupt and illegal practices submitted by the petitioner on 1st May 1952 be not considered as part of the petition because it was filed after the expiry of limitation of 14 days, *vide* rule No. 119 of the Representation of the People (Conduct of Elections and Election Petition) Rules 1951. The petitioner submitted application No. 29C on 15th December 1952 that due to mere oversight and inadvertence he did not submit the list of particulars along with the original petition and he further missed to verify the list of particulars due to *bona fide* mistake and so he should be allowed to verify the list of the particulars before this Tribunal. By application No. 30A2 the petitioner seeks to amend the particulars submitted by the petitioner by adding sub-clause (e) to part 6 of the particulars and by this proposed amendment the name of Sheoqadam of village Bhita Hara, Panch, Panchayat Adalat Captainganj, is sought to be added, as the latter is alleged to have acted as polling agent of the respondent No. 1 at polling station Newada.

According to the petitioner, the details of corrupt and illegal practices were given by him in sufficient detail in the petition itself and so by inadvertence the list contemplated by sub-section (2) of section 83 of the Act was not filed along with the petition. The learned counsel for the petitioner has urged before us

that as under section 85 this Tribunal is not competent to dismiss the petition on account of any defects for not observing the conditions of section 83 of the Act, the proposed amendment should be allowed by this Tribunal. It has further been urged that this Tribunal cannot dismiss the election petition except at the conclusion of the trial, i.e. after recording the entire oral evidence produced by the parties as section 98(a) lays down that at the conclusion of the trial of an election petition the Tribunal shall make an order dismissing an election petition or granting some other reliefs.

The first question, which arises for determination, is whether the petitioner was bound to file a list setting forth full particulars of any corrupt or illegal practice which the petition alleged, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and the place of the commission of such practice, along with his petition, even though he gave sufficient details of such practices, according to his estimation, in the petition itself. Section 83 of the Act clearly lays down as follows:—

(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

(3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition

A perusal of this section clearly shows that a valid and proper petition must be accompanied by a list signed and verified by the petitioner in the manner laid down in the Code of Civil Procedure for the verification of the pleadings and this list should set forth full particulars of any corrupt or illegal practice which might have been alleged by the petitioner. If there are allegations in the petition regarding corrupt and illegal practices on the part of the respondents or their agents, it is mandatory that the petitioner should file a list as contemplated by sub-section (2) of section 83, and if no list is filed, there would be no proper petition, as contemplated by section 80 of the Act before the Tribunal. Section 80 of the Act clearly lays down that no election shall be called in question except by any election petition presented in accordance with the provisions of this Part. Section 81 provides for presentation of petitions, and section 82 lays down that a petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated. It thus becomes clear that if an election petition, in which there are allegations regarding corrupt and illegal practices having been committed by the respondents, is not accompanied by a list as contemplated in sub-section (2) of section 83 such an election petition cannot be deemed to be any proper and valid election petition and so it cannot be considered by any Tribunal at a later stage. There is no provision in the Act enabling the Tribunal to amend the petition itself. Sub-section (3) of section 83 gives the Tribunal power to amend the particulars given in the list, but it does not give any power to the Tribunal to amend the petition itself, or to allow the petitioner to give a list after the period of limitation has expired If the petitioner had given any list along with his petition, this Tribunal could order the petitioner to give such further and better particulars as might have been deemed necessary, but in this case the petitioner did not give any list, as contemplated by sub-section (2) of section 83 within the prescribed period of limitation. The petitioner has thus failed to comply with the mandatory provisions of law laid down above and so the petition filed by him cannot be deemed to be a petition by which any election can be called in question Application No. 29/C cannot, therefore, be allowed and it is rejected, and application No. 27/C is allowed for the reasons given above. The amendment application No. 30A2 is also dismissed because the list which was given by the petitioner in this case was not a list according to law as it had been filed when the period of limitation had already expired and so there can be no question of amendment of any such list at any subsequent stage. It appears to us that the petitioner has been negligent and there seems to be no good reason for allowing him any indulgence in the matter of amendment under the circumstances mentioned above.

Coming now to the second condition of the petitioner that this Tribunal is not competent to dismiss the petition unless the entire oral evidence of the parties is recorded, reliance has been placed on sections 85 and 98(a) of the Act. It has been argued that this Tribunal cannot dismiss the petition when the Election Commission did not dismiss it under section 85 of the Act. According to the petitioner, this Tribunal can dismiss the petition only under section 98(a) of the Act, even though the petitioner may choose to omit the successful candidate from the array of the parties. We are unable to agree with this contention of the petitioner.

Section 85 of the Act runs as follows:—

> "If the provisions of section 81, section 83 or section 117 are not complied with the Election Comm'ssion shall dismiss the petition:
>
> Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure."

A perusal of this section clearly shows that the Election Commission is empowered to condone delay but the defects contemplated in sections 81, 83 and 117 cannot be condoned. The argument is that if the Act contemplated that a petition could be dismissed for want of list or for want of necessary parties, section 82 should also have been mentioned in section 85 of the Act, but as this has not been done, the Legislature made it clear, according to the petitioner, that election petition would not be dismissed for any defects on account of non-observance of the provisions of section 83.

Section 90 sub-section (4) clearly lays down that notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117 This provision clearly lays down that even though the Election Commission may not choose to exercise the powers conferred on it by section 85 of the Act, the Election Tribunal would be within its rights to dismiss the petition for non-observance of the provisions of sections 81, 83 or section 117, and so the Tribunal would be legally competent to dismiss the election petition, even though the Election Commission might send the petition to the Tribunal for trial.

Section 98 of the Act merely lays down that at the conclusion of the trial of an election petition the Tribunal shall pass four types of orders mentioned therein, but it does not contemplate the contingency of the dismissal of any petition which might not be a petition in accordance wih law. We have already pointed out that under section 80 no election can be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act, and so if the provisions of this Part are not complied with, there would be no regular and valid election petition before the Tribunal and so an invalid or an irregular election petition would not be in any way sufficient for the purpose of challenging an election.

The words "conclusion of the trial" in section 98 have not been defined in the Act, and so it cannot be properly urged that these words must always mean that the Tribunal cannot dismiss a petition unless the entire oral evidence of the parties is recorded and arguments are heard in full. We have already pointed out above that this argument would compel the Tribunal to record evidence, even though the petitioner does not implead the successful candidate at the election as a party to the election petition. If an election petition is dismissed because it is found to be time-barred, it will be legally deemed to have been dismissed at the conclusion of the trial. Again, if any election petition is dismissed on any other technical ground which might be sufficient for the decision of the case, we think that the trial of the case would be legally deemed to be concluded at that stage. In this view of the matter, we think that the petitioner's persistent failure to submit the list contemplated by sub-section (2) of section 83 within the period of limitation and his failing to verify the list filed by him would go very much against him. The petitioner failed to observe the mandatory provisions of section 83(2) of the Act and so the election petition filed by him would not be deemed to be an election petition for the purpose of section 80 of the Act.

It has been laid down in Pritam Singh *versus* Hon'ble Sri Charan Singh and others, reported in *U.P. Gazette Extraordinary*, dated 26th December 1952, that an election petition must fail if necessary parties mentioned in section 82 are not impleaded. In Sri Parshottam Ranchhoddas Patel *versus* Shanti Lal Girdhari Lal Parikh, it was held that an election petition should fail if no list contemplated under section 83(2) is filed along with it. The present petition must, therefore, fail.

We hold that the list of particulars filed by the petitioner is liable to be rejected as it was filed after the period of limitation and it is also bad for want of verification and so the list could not be properly entertained after the statutory period of limitation had expired. As the list was filed after the expiry of the period of limitation, this Tribunal is not competent to order its amendment. As the election petition brought by the petitioner contained allegations of corrupt and illegal practices, the petition must have been accompanied by the list contemplated under section 83 (2) of the Act, but as the provisions of this sub-section were not complied with, we hold that there is no petition under section 80 of the Act before us and the present irregular petition is liable to be dismissed on these grounds. We decide all these 3 issues against the petitioner. Other issues need not be decided as the case can be decided on these issues only.

In view of our findings above, we hold that the petitioner is not entitled to any relief and we dismiss the present petition. The petitioner will have to pay Rs. 100 as costs to the respondent No. 1. The remaining respondents will neither pay nor receive any costs.

(Sd.) BRIJ NARAIN, *Chairman.*

The 12th January, 1953.

(Sd.) B. B. LAL,
(Sd.) SUKHDEO PRASAD, } *Members.*

[No. 19/199/52-Elec.III.]

S.R.O. 156.—WHEREAS the election of Shri Nihal Singh and Shri Harnam, as members of the Legislative Assembly of Patiala and East Punjab States Union from the Dadri Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Partap Singh, son of Shri Mam Chand, Village Patawas Kalan, Tehsil Dadri, District Mohindergarh;

AND WHEREAS, the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, PATIALA.

V. B. Sarwate—*Chairman.*
Raghunandan Saran—*Member.*
E. M. Joshi—*Member.*

ELECTION PETITION NO. 210 OF 1952.

Ch. Partap Singh *Vs.* Ch. Nihal Singh and 13 others.

ORDER DELIVERED ON 6-1-1953.

The petitioner Partap Singh calls in question the general election in the Dadri Constituency of the PEPSU Legislative Assembly. This is a double member constituency with one seat reserved for the scheduled castes. The petitioner and the respondents were all the duly nominated candidates. The respondents 9 to 14 withdrew their nominations leaving the petitioner and the respondents 1 to 8 in the contest. Of these the respondents 4, 5, 6 & 7 belonging to the scheduled castes were eligible for the reserved seat. As a result of the election the respondent No. 7 Harnam has been declared elected in the reserved seat and the respondent No. 1 Ch. Nihal Singh Takshak in the general seat. The number of votes polled by each of the nine candidates who fought the election are stated in para 2 of the petition and there is no dispute about them. The petitioner who came the second highest in the contest could not, however, be declared elected

because under the special procedure laid down in Section 54 of the Representation of People Act, 1951, Harnam though third highest had to be declared elected in the reserved seat. and for the remaining general seat the respondent No. 1 having scored over the petitioner had to be returned.

2. The petitioner seeks to avoid the whole election on two grounds:—

(i) That the respondents No. 4 Bhiku Ram and No. 6 Muni Lal both scheduled caste candidates were not eligible being under 25 years of age and their nominations had been improperly accepted; and

(iii) That the election had not been free in that a systematic appeal had been made by respondent No. 1 to the voters, many of whom in this constituency are of "Phogat" Gotra, that they should vote in his favour, because he was their kin and from their own social unit, in preference to the petitioner who belongs to an altogether different gotra "Sangwan".

The petitioner asserts that the improper acceptance of the nominations and the undue influence exercised on the voters by the propaganda on the basis of different gotras of the petitioner and the respondent No. 1 had both materially affected the result of the election.

3. Both the returned candidates have controverted the grounds alleged by the petitioner and the points which arise for determination are, therefore, the following:—

1. Did Respondent No. 1 use undue influence in the Election in the manner alleged in List B, and did his action interfere with the free exercise of the electoral rights of the electors?

2.(a) What is the date of birth of Respondent No. 4 and of Respondent No. 6?

(b) Were they or any of them not of the prescribed qualifying age of 25 years on the date of nominations?

(c) Was objection that they were under-age taken by the petitioner before the Returning Officer?

(d) If not, is he precluded from raising that objection now?

(e) Was nomination in the case of Respondents Nos. 4 and 6 or either of them improperly accepted?

(f) Did the improper acceptance of the nomination materially affect the result of the entire election though Respondents Nos. 4 and 6 were scheduled caste candidates?

3. Should the election be declared as wholly void in this case as prayed for by the petitioner? What is the approriate order to be made under Sections 98 and 99 of the Representation of the Peoples Act, 1951?

4. We deal with the second issue first. About the respondent Muni Lal, no attempt at all has been made to prove that he was not of the qualifying age and the petitioner seems to have abandoned the ground of the alleged improper acceptance of Muni Lal's nomination. We must, therefore, find against the petitioner on issue 2 so far as Muni Lal Respondent No. 6 is concerned.

5. The petitioner, however, sticks to his guns in respect of the improper acceptance of Bhiku Ram's nomination. But on this point also we have to find against him except as to sub issue (c) regarding waiver. Though the objection as to age does not appear to have been taken before the Returning Officer, that does not preclude the petitioner from raising it before the Tribunal. Being under age is a statutory disqualification for candidature at an election, and in respect of a statutory disqualification there can be no waiver. This seems to have been realised on behalf of the respondents and the point was not, therefore, even touched by their counsel during arguments.

6. The onus of proving that Bhiku Ram was less than 25 years of age at the time of nomination was on the petitioner. The only proof given on his side is the entry in the admission and discharge register of the Dadri School which Bhiku Ram is said to have attended (Ex P. 1). The entry relates to Bhiku Ram, son of Mul Chand Chamar. The respondent No. 4, is, as he has been describing himself always, the son of Toli Ram. We, however, accept that this entry refers

to and was actually made in respect of the respondent No. 4 and does not refer to some different person. P.W. Banarsi Das is the Teacher who made the entry in the register and who had obtained Mul Chand's application for the boy's admission in the School. P.W. 6 Duli Chand was the class teacher of the boy for two years. They both identify the respondent No. 4 as the Bhiku Ram who was attending their school and in respect of whom this entry was made. They state that there was no other boy of this name in the school, and even after Bhiku Ram left the school, they have continued to follow his career and to know him. In fact it is not suggested on the other side that there is any other man in Dadri of this name to whom the entry could refer. Mul Chand was uncle of Bhiku Ram but the evidence shows that Mul Chand being without son, was taking interest in the nephew and bringing him up as his son. We can, therefore, understand why Mul Chand may have described himself as or was supposed by Banarsi Das (who wrote the form of application for admission and obtained Mul Chand's thumb mark to it) to be father of Bhiku Ram. We feel satisfied that the entry refers to the respondent No. 4.

7. The date of birth of Bhiku Ram as given in the entry is 17th July, 1929. The entry itself was made for the first time in 1937 when the boy was first admitted to this school. We may infer that this date of birth was noted according to information supplied by Mul Chand. Banarsi Das is unable to recollect what the material was with Mul Chand from which this date could be found out to be the proper date of the boy's birth. Mul Chand was illiterate and we cannot suppose him to have carried in his memory the date of his nephew's birth accurately according to the Grogorian Calendar to be able to tell it to Banarsi Das without the aid of any record of the birth.

8. The entry in the school register is no doubt relevant evidence admissible under S. 35 of the Evidence Act but the law does not make such entry conclusive nor even presumptive evidence of the date of birth. Its probative value must vary with the circumstances of each case. The source of information of the person at whose instance the entry was made, the possibility and extent of its corroboration by other evidence which could be produced and the conduct of the persons, who should be supposed to be better informed of the time of birth, in accepting that entry as correct statement are all matters to be taken into consideration in determining its authenticity.

9. Mul Chand not being father may not have had the exact date of birth within his knowledge and we are not told how he had been in a position to tell it precisely. Mul Chand was an illiterate man belonging to a backward class. The petitioner's own witness Jai Bhagwan Bharadweja P.W. 1, the present Headmaster of this Dadri High School, tells us of his own experience of the irresponsible manner in which such guardians get the birth date recorded.

"In some cases the guardians happen to give incorrect dates of birth and later on request for their correction. This happens because the people in that part are still in what may be called backward state—Mohindergarh district as a whole including Dadri, is declared as a backward Ilaqa. I have been in service as a teacher for the last 29 years. I have experience of Dadri Schools for 15 years and can say that the guardians are not very particular as to the dates of birth of their children and are not particular that exact ages of their wards should be recorded".

This evidence tends to destroy the evidentiary value of the school register to a great extent.

10. The evidence of Duli Chand P.W. 6 shows that Bhikuram had reached the 5th class in 1939. He would be just about 10 years of age then if this entry about his date of birth is correct. This would be the age a bright boy would reach that class who starts his education early enough and secures uninterrupted promotions each year. Bhiku Ram does not, however, appear to have been that type. On behalf of respondent No. 1 evidence has been produced to show that Bhiku Ram was attending a private school of Ambukavi. Though we will not infer from this evidence that he was not educated in the Dadri Government School, the evidence at least shows that Bhiku Ram had wasted some years in attending that Pathshala before he came to this Government School in 1937. It is, therefore, probable that he may have been more than 8 years of age when he came to join the Government School.

11. It was possible to produce corroborative evidence of the correctness of this school register entry by showing from the register of births that on the corresponding date the birth of a male child to Toli Ram Chamar is recorded. The petitioner could easily get the information from Bhiku Ram. Bhiku Ram indeed has

been helpful to the petitioner to the extent of coming up to give evidence in a partisan spirit (P.W. 13). He, however, refrained from disclosing the place of his birth apparently for fear that the information might be used to falsify the school register entry by production of the register of births of that place.

12. We think that Bhiku Ram when he grew up could not have remained ignorant about the date and place of his birth. In relation to the ages of his brothers, he could easily fix the year of his own birth. His own statements made before the question of his age was raised in this election petition, have the effect of proving the incorrectness of the school entry as an under-estimate of his age. After leaving the school in 1942, he went on war service. He does not give the date of his recruitment but has stated that it was in the year 1944. This may well be in 1943 or very early in 1944 because he states that the war continued for 1½ or 2 years after his recruitment, and we know that it came to a close in April, 1945. He admits that at the time of recruitment he gave his age as 18 years but wants it to be believed that he was actually only 16 then. Even this statement of 16 years would show the school entry 17-7-1929 to be inaccurate and an under-estimate. And if he was 18 years in 1943, he was clearly more than 25 at the time of nomination for the election. When he applied to the Provincial Congress Committee for congress ticket, he stated his date of birth as 25th August 1923 (Ex. I. R. 1). In the witness box he tried to explain away this admission by stating that he did not make the entry in the application in his own writing. This we do not accept as adequate or even trust worthy explanation. The same date of birth was given by him in his nomination paper and was accepted by all concerned to be correct. It seems to us that the petitioner got information about the inaccurate record of date of birth in the school register after the election was over and has sought to take advantage of it to make the election petition. We find that it is not proved that Bhiku Ram was less than 25 years of age on the date of his nomination, and it follows that his nomination was not improperly accepted.

13. Our finding being that the petitioner has failed to make out a case of improper acceptance of the nomination of either the respondent 4 or respondent 6, the question of the election being materially affected by such acceptance does not arise.

14. Coming now to consider issue No. I we think the petitioner has failed to make out any case of a major or minor corrupt practice on the part of respondent No 1, which would be covered by Clause (2) of Section 123 or by Clause (5) of Section 124 of the Representation of the People Act, 1951. The appeal to the voters of Phogat gotra to vote in his favour and to refrain from voting in favour of the petitioner because of his different gotra "Sangwan" is alleged to have been made on one occasion only namely in a meeting convened on 19th December 1951 in village Dhani. A number of witnesses have been examined on both sides regarding the holding of this meeting. The petitioner's witnesses P.W. 3, P.W. 4 and P.W 7 to P.W. 13 have stated that a meeting was convened and addressed by the respondent No. 1, Nihal Singh. The Respondent's witnesses 14 in number and the respondent No. 1 himself as the last witness on his side have given evidence that there was no meeting at all at Dhani.

15. Without stating in detail about our examination of this evidence, we may only say that we are not impressed by the evidence on respondent's side that there had been no meeting at all. We believe that a meeting was held despite the fact that the respondent has called as witnesses on his side the very persons Mani Ram, Ram Gopal, Harphul, Ramjas, Des Ram, Capt. Dharam Singh, Mahebub Singh Capt. Tek Chand and Mansa Ram, whom the petitioner's witness No. 4 Ramrikh named as being the leading men of Phogat gotra present in the meeting and whose attendance was borne out by other witnesses for the petitioner as well. The petitioner by the evidence of his witness No. 2 has sought to show that Respondent No. 1 secured a much larger number of votes at the Rawaldih, Bhagwi, Imlota and Mori Polling Stations than the petitioner was able to poll there. While the petitioner seeks to explain this position by the fact that these polling stations are within the area in which persons of Phogat gotra predominate, the respondent would account for the heavier polling in his favour in this area by the fact that he has been residing among these people and has done some public work for their welfare and so is generally popular with them. We are inclined to accept this explanation of the respondent as we find that the petitioner likewise scored heavily over the respondent No. 7 within the area of the constituency in which the petitioner's home is situated. In fact the great popularity of the respondent No. 1 in that area easily accounts for the fact that the above named persons have come forward to deny even the fact of the meeting at Dhani in connection with the

election. We do not think that the allegation about this meeting is a pure myth and cannot bring ourselves to believe that the petitioner's witnesses have spoken of the meeting and of the presence therein of these supporters of the respondent from mere imagination.

16. The respondent's witnesses have stated that the usual practice is to get a letter of invitation issued by Kishenlal and Mahebub Singh of Dadri for a panchayat of Phogats to be assembled and that as no such letter is stated to have been issued, they want us to infer that no meeting was held. An invitation by these men may be necessary for convening a panchayat in order to discuss some question relating to a caste matter or a violation of caste rules. A meeting called for canvassing support in an election not being one for a discussion of any matter within the cognisance of the elders of the caste need not have been convened by the two headmen. We, therefore, believe that a meeting was held at Dhani as stated by the petitioner's witnesses.

17. The meeting was no doubt for canvassing support for respondent No. 1's candidature, but we do not find that what was said there on his behalf came within the mischief in clause (5) of Section 124 or Clause (2) of Section 123. According to the petitioner that was an assembly of men of Phogat gotra. The respondent No. 1 himself does not belong to that gotra. He is 'Takshak' (locally pronounced and referred to as 'Tokus') from village Bhagwi. From the evidence we find that Phogat gotra people are resident now in an area of 19 villages which being originally only 12 villages is still referred to as 'Barah'. Dadri, Rawaldhi and Dhani are the important places in this Barah. Bhagwi is not within this social unit of the Phogats. It is in a group of other seven villages referred to as 'Satgawan' which area forms part of a separate social unit in which Phogats do not predominate. Some witnesses of the petitioner have, however, sought to make out a relationship between the 'Takshaks' of respondent's Bhagwi group and the Phogats of the Barah' by stating that according to a tradition, these Takshaks of Bhagwi are really descendents of some Phogats of Rawaldhi who had migrated to Bhagwi. They would have us believe about such kinship between the two groups by stating that inter-marriages are prohibited between people of Bhagwi and the Phogats of Rawaldhi. We have no satisfactory proof of such alleged kinship between people of these two separate social units bearing different gotra names. In fact instances of inter-marriages between these groups have been given and the one conspicuous amongst them is of the respondent No. 1's brother marrying a daughter of a Phogat family of Dhani. We are not, therefore, satisfied that there could be any effective appeal by respondent No. 1 to the assembled voters at Dhani soliciting their votes as Phogats in his favour and asking them not to vote for a 'Sangwan' like the petitioner even assuming that an appeal in this form was made.

18. The gotra names like Phogat, Sangwan and Takshak amongst the Jats signify distinctive ancestral stocks or families, the persons belonging to each being regarded as kinsmen. These are thus easily distinguishable as being the species of the genius or larger class referable as 'caste' which according to the Concise Oxford Dictionary means "an Indian hereditary class, with members socially equal, united in religion and usually following the same trade, having no social intercourse with persons of other castes". In this sense the Jats as a whole would be one caste consisting of numerous families having different gotra names. Soliciting a vote on the ground of the voter and the candidate being kinsmen as evidenced by their common gotra cannot thus be an appeal on grounds of caste and certainly not of community which would be a term of even larger import than caste. There is, moreover, no proof here of there having been a systematic appeal which should mean methodical and according to a plan, whereas all the evidence we have here is of a sporadic and solitary instance of the appeal having been made in one panchayat at Dhani. We cannot, therefore, find that any corrupt practice falling under Clause (2) of Section 123 or Clause (5) of Section 124 had been committed by the respondent No. 1.

19. Under Section 100(2) Clause (a) the petitioner would be entitled to a declaration of the election of the respondent No. 1 being void on proof of the commission of the corrupt practice and the further proof that such practice had materially affected the result of the election. Such further proof is also not forthcoming in the four polling stations named by P.W. 2 not because of his appeal to Phogats this case. We have already remarked that the respondent No. 1 was leading at to vote for him but because he is well-known in that part and has done some public work for the benefit of those people. The assembly at Dhani was, according to Ram Sarup P.W. 3, who alone risked an estimate, of a mere 400 or 500 persons. We are not given any estimate as to how many of these were actually registered voters and how many were Phogats out of them. Again we have no basis to find out how many out of them were impressed by the appeal and whether it

did really influence their voting. The difference in the votes polled by the petitioner and the respondent No. 1 is of 1866 votes and we are unable to find that this difference would have been wiped out in the absence of that one meeting attended by 400 or 500 men at Dhani. We must, therefore, find against the petitioner on Issue No. I.

20. In the result, therefore, on Issue No. III we must find that the petitioner is not entitled to any declaration that the election is wholly void or that it is void even in respect of the respondent No. 1. We accordingly dismiss the petition under Section 98 of the Representation of the Peoples Act, 1951, our finding being that no corrupt practice is proved. The only direction necessary under Section 99 in this case is about the costs of the petition. We order the petitioner to pay the costs of the respondent No. 1 Rs. 298/9/- and Respondent No. 7 Rs. 95/14/- as scheduled below including Rs. 200 which we allow as pleader's fee to respondent No. 1.

SCHEDULE OF COSTS

Petitioner Ch. Partap Singh.	Rs. A.	Respondent No. 1 Ch. Nihal Singh.	Rs. A.	Respondent No. 7 Harnam.	Rs. A.
1. Stamp for power of attorney and application .	3 0	1. Stamp for power of attorney and applications .	1 0	1. Stamp for power of attorney and applications .	Nil.
2. Stamp for process fee . . .	12 8	2. Stamp for process fee . . .	8 0	2. Stamp for process fee . . .	12 0
3. Subsistance for witnesses . .	163 0	3. Subsistance for witnesses . .	89 9	3. Subsistance for witnesses . .	83 14
4. Pleader's fee .	No certificate filed.	4. Pleader's fee .	200 0	4. Pleader's fee .	No certificate filed.
Total .	178 8	Total .	298 9	Total .	95 14

(Sd.) RAGHUNANDAN SARAN, *Member.*

(Sd.) E. M. JOSHI, *Member.*

(Sd.) V. B. SARWATE, *Chairman.*

The 6th January, 1953.

[No. 19/210/52-Elec.III.]

S.R.O. 157.—WHEREAS the election of Pt. Bishambhar Nath Panday, as a member of the Legislative Assembly of the State of Uttar Pradesh from the Allahabad City Central Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951, (XLIII of 1951), by Pt. Kalyan Chandra Mohile *alias* Chunnan Guru, son of Pt. Kandhaiya Lal, Allahabad;

AND WHEREAS, the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission:

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL AT ALLAHABAD.

PRESENT:—Sri V. G. Oak, I.C.S., *Chairman.*
Sri N. N. Mukerji, *Member.*
Sri Babu Ram Avasthi, *Member.*

ELECTION PETITION No. 218 OF 1952.

Sri Kalyan Chandra Mohile—*Petitioner.*

Versus

Sri Bishambhar Nath Pandey and 10 others—*Respondents.*

ELECTION PETITION No. 218 OF 1952.

JUDGMENT

This is an election petition by one Pt. Kalyan Chandra Mohile *alias* Chunnan Guru, a resident of Yahiapur, Allahabad City, who was a candidate for election of 1951-52 to the U. P. Legislative Assembly from Allahabad City (Central) Constituency, from which Pt. Bishambhar Nath Pande, respondent No. 1, was declared elected after contest.

Besides the petitioner, there were eleven other candidates who had been validly nominated for the seat. The petitioner, however, could not contest as his name was alleged to have been withdrawn by one Sri K. C. Nigam. In this petition Sri Kalyan Chandra Mohile challenges the genuineness and legality of that withdrawal.

It appears that after nomination, some of the independent candidates tried to combine together and put up a joint fight against the candidates, who had been nominated on behalf of the Congress. It is alleged that with this idea in view some interested persons tried to persuade the applicant Sri Kalyan Chandra Mohile and three other independent candidates, namely Sri Sehat Bahadur, Advocate, respondent No. 4, Sri Baijnath Kapoor, respondent No. 5 and Sri Bhagwan Das Tandon, respondent No. 6, to submit to the arbitration of late Lala Manmohan Das *alias* Bachcha Ji, and that after Bachcha Ji's selection only one person out of these four should contest the election against the Congress candidates.

The case of the petitioner is that he too was persuaded to accept Bachcha Ji as an arbitrator, and that on the 30th November 1951, the date fixed for withdrawal of nominations, he went to see Bachcha Ji who was a premier Rais of Allahabad, at about midday, and handed over to him a withdrawal notice properly signed by him together with a letter of authority, which contained the petitioner's signature but not the name of the person who was to submit the withdrawal notice before the Returning Officer. It is also alleged that the other three persons, namely respondents Nos. 4, 5 and 6, also handed over at the same meeting withdrawal notices to enable Lala Manmohan Das to select one of these four persons to contest the election and to send the other three papers to the Returning Officer, that is to say, that the parties had settled that the person whom Lala Manmohan Das selected would be given back the withdrawal notice which he had signed, while the other three would be delivered to the Returning Officer.

It is further alleged that Lala Manmohan Das, who was very ill at that time, refused to decide the matter himself but wanted the parties to come to a compromise between themselves. That the petitioner did not agree to any idea of compromise, and left the house of Lala Manmohan Das after some hot discussion without taking back the papers which he had given to him earlier.

That afterwards by some fraudulent manipulations the withdrawal notice signed by the petitioner along with the blank authority for presenting the same reached Sri Gajadhar Prasad Bhargava, a practising lawyer; though the petitioner had never entrusted the matter to Sri Bhargava, nor did he give the withdawal notice and authority to him, nor had he appointed Sri G. P. Bhargava as an arbitrator in place of Lala Manmohan Das. That Sri G. P. Bhargava, at the instance of the other candidates, presented the withdrawal notice of the petitioner together with the letter of authority, on which the name of Sri K. C. Nigam had been entered by Sri G. P. Bhargava, to the Returning Officer the same afternoon before 3 P.M. and also the witdrawal notices signed by Sri Baijnath Kapoor, respondent No. 5, and Sri Bhagwan Das Tandon, respondent No. 6.

It is necessary to mention here that Sri Kalyan Chandra Mohile had filed two nominations. The first one, which is Ex. 3, was proposed by Sri Misri Lal and seconded by Sri Mahendra Singh. It was presented to the Returning Officer on the 23rd of November 1951. The second one had been proposed by Sri K. C. Nigam and had been seconded by one Sri Banwari Lal. This second nomination paper had been presented to the Returning Officer on the 24th of November 1951.

It is alleged in the petition that when Sri G. P. Bhargava presented the withdrawal notices to the Returning Officer together with the letter of authority which he himself had filled in, some interested person called Sri K. C. Nigam, who was the proposer on one of the nomination papers of the petitioner, from the Bar

Association where he was working, and that Sri K. C. Nigam appeared before the Returning Officer who asked him if he was K C Nigam, a proposer of the petitioner. To this Sri K. C. Nigam replied in the affirmative and went back to the Library.

The petitioner's case further is that his nomination paper in which Sri K. C. Nigam was the proposer, was never scrutinized and accepted by the Returning Officer. So in fact Shri K. C. Nigam could not legally be called a proposer, nor he under the law could withdraw the nomination of the petitioner. In fact it is alleged that Sri K. C. Nigam had no *locus standi* to withdraw the petitioner's nomination or even to present the withdrawal notice to the Returning Officer. Sri Kalyan Chandra Mohile's positive allegations are that the presentation of the withdrawal notice by Sri Bhargava under the circumstances amounted to a fraud and was no withdrawal in law That on the 3rd of December 1951, an application was moved before the Returning Officer in which all these facts were brought to his notice and that Sri K C. Nigam also sent a letter independently about the correct situation to the Reurning Officer. That on receiving these letters, the Returning Officer called Sri Nigam on the 4th of December 1951, and examined him in court and afterwards held that the withdrawal of the petitioner was no withdrawal at all, but instead of including the petitioner's name in the list of valid nominations, he adopted the curious procedure of "sending a recommendatory communication to the Chief Electoral Officer, U.P., Lucknow, for inclusion of the petitioner's name among the contesting candidates, which recommendation was rejected." That on a later date when the supporters and sympathisers of the petitioner went to the Returning Officer to find out as to what had happened to his application, they were told that the Chief Electoral Officer, U.P., Lucknow had ordered on the 8th of December 1951 that the recommendation of the Returning Officer could not be accepted That subsequently the final list of validly nominated candidates under section 38, Representation of the People Act, 1951, was published on the 11th of December 1951, in which the name of the petitioner was omitted.

That on the 13th of December 1951 a writ petition was moved by Sri Misri Lal, one of the proposers of the petitioner, before the Hon'ble High Court for issuing an order to the Returning Officer concerned to include the name of the petitioner in the list of validly nominated candidates, but the Hon'ble High Court dismissed the writ petition on the 4th of January 1952, and observed that if the facts stated in the affidavit were correct, a wrong had been done to the applicant and to Sri Mohile *prima facie*, but they felt that Article 329 of the Constitution precluded them from granting him the redress. According to the Hon'ble High Court, the petitioner's remedy lay before an Election Tribunal.

The petitioner now alleges that the result of the election had been materially affected by the acceptance of the so-called withdrawal and the improper rejection of the petitioner's nomination on the basis of the alleged withdrawal in the manner stated above, and that the omission of his name from the list of validly nominated candidates was illegal, *ultra vires* and unjustified. He also asserts that it is a clear breach of rules and laws relating to withdrawal and is an obvious mistake in the use of the prescribed form which caused a wrong to the petitioner, his proposer, seconder, supporters and electors, and the result of the election has been materially affected thereby. He claims that the election of Pt. Bishambhar Nath Pande, respondent No. 1, be declared to be void, and election be set aside.

Only Pt. Bishambhar Nath Pande the elected candidate, (hereafter referred to as the respondent) contests this election petition. He alleges that the petitioner Sri Kalyan Chandra Mohile, like some other candidates, was gambling on a chance in seeking election, and when some of the candidates felt that they would be wasting their strength in the election, and that if they combine and set up only one from amongst themselves for a united fight there might be a better chance that the petitioner joined the combine against the respondent and first selected the late Lala Manmohan Das as an arbitrator to decide which of the candidates should stand against the respondent and who should withdraw. That they knowingly signed various withdrawal notices and handed them over to Lala Manmohan Das. That subsequently when Lala Manmohan Das did not or could not settle as to who alone should remain in the field the candidates, including the petitioner, decided that Sri G P. Bhargava should arbitrate between them and name one candidate. That Sri Bhargava was working in court when this matter was settled and that three of the candidates, namely Sri Sehat Bahadur, Sri Baijnath Kapoor and Sri Bhagwan Das Tandon together with Sri Kamla Prasad Mohile *alias* Kundan Guru, the younger brother of the petitioner, came to the court and referred the whole matter to Sri Bhargava and also handed over the withdrawal notices to him with the same request that he should select one of the four persons to contest the election. That subsequently Sri K. C. Nigam, who had signed one

of the nomination papers of the petitioner as a proposer which nomination paper had been held valid by the Returning Officer, also joined Sri Bhargava who had been called from court by Babu Sehat Bahadur. That Sri Bhargava before deciding as to who should withdraw, obtained a letter of authority signed by the petitioner from his younger brother. That subsequently Sri Bhargava went to the Court of the Returning Officer where three withdrawal notices were presented to the Returning Officer, one by Sri Baijnath Kapoor, another by Sri Bhagwan Das Tandon, and the third by Sri K. C. Nigam, together with the letter of authority. That the Returning Officer accepted these withdrawal notices and examined the two candidates and Sri Nigam who was a proposer, and thereafter accepted their withdrawal notices.

That everything done was legal and above board, and that Sri K. C. Nigam, who had the full authority to present the letter of withdrawal to the Returning Officer, did so legally, and so the petitioner has no ground to challenge the election of the respondent.

That Sri Kamla Prasad Mohile, the younger brother of the petitioner, was looking after the interest of the petitioner throughout, and that it was he who had conveyed the consent of the petitioner to Sri Bhargava, and that it was he who had handed over the necessary documents to Sri Bhargava. That the subsequent proceedings adopted by the petitioner were illegal and *ex parte* proceedings which were not binding on the respondent. The respondent further alleges that the petitioner's name was rightly excluded from the list of validly nominated candidates published under section 38, and that the petition was bad for want of particulars of fraud. That the petitioner has no cause of action and as such he is not entitled to any relief.

It is to be noted here that 24th November 1951 was the last date for nomination of candidates for this Constituency. The scrutiny was done on the 27th of November. The Returning Officer fixed 30th of November 1951 (up to 3 P.M.) as the last date for withdrawal. The list of validly nominated candidates was published on the 14th of December 1951, and the voting took place between the 23rd and the 31st of January 1952.

The pleadings of the parties gave rise to the following issues:

ISSUES

1. Was Sri K. C. Nigam a proposer within the meaning of section 37 R.P. Act? Was he competent to present the application for withdrawal?

2. Was the withdrawal application presented to the Returning Officer by Sri G. P. Bhargava or by Sri K. C. Nigam?

3 Was the notice of withdrawal validly presented? Was the withdrawal legal and effective?

4. Did the presentation of the withdrawal notice amount to faud? Is the withdrawal ineffective?

5. Was the petitioner's name wrongly excluded from the list of validly nominated candidates published under section 38 of the Act?

6. Whether the petition is bad for want of particulars of fraud?

7. Whether the petition does not disclose any cause of action?

8. To what relief if any, is the petitioner entitled?

FINDINGS

Issue No. 1.—It has already been mentioned above that Sri Kalyan Chandra Mohile *alias* Chunnan Guru had filed two nomination papers. One (Ex. 3) was proposed by Sri Misri Lal and seconded by Sri Narendra Singh. This document was scrutinized by the Returning Officer on the 27th of November 1951, as appears from the certificate attached thereto. The other nomination paper (Ex. 4) was signed by Sri Khushhal Chandra Nigam as proposer and Sri Banwari Lal as seconder. There is no certificate of scrutiny under it. The case of the petitioner is that there was no objection against any of his nomination papers, so the Returning Officer scrutinized the nomination paper which had been filed first, *i.e.* on the 23rd of November 1951, and endorsed his certificate under it. As this nomination paper (Ex. 3) had been found to be correct, it became unnecessary for the Returning Officer to scrutinize the other nomination paper filed by Sri Kalyan Chandra Mohile, that is to say, that the second nomination paper (Ex. 4) filed on the 24th of November 1951 and signed by Sri K. C. Nigam as proposer was not scrutinized at all.

It has been urged before us that as the second nomination paper, in which Sri K. C. Nigam was the proposer, was never scrutinized, it should be considered an invalid paper and that Sri K. C. Nigam should not be accepted as a proposer for the petitioner within the meaning of section 37 of the R.P. Act.

The petitioner has examined Sri K. C. Nigam as his witness. Sri Nigam (P. W. 2) states that he had never been called by the Returning Officer to his office for purposes of scrutiny. The Returning Officer, Sri C. B. D. Dvivedi, has, however, been examined on behalf of the respondent as D.W. 1, and he is certain that he scrutinized all the nomination papers that had been filed by the different candidates. It is hardly necessary to discuss this question regarding the actual scrutiny of the nomination papers. It is enough to refer to the statement of Sri Mohile, who examined himself as one of the witnesses in this case. In the course of his cross-examination Sri Kalyan Chandra Mohile admitted clearly that Sri K. C. Nigam was his proposer and that he accepted his proposal form. There is thus no room to doubt that for all practical purposes Sri K. C. Nigam was the proposer of Sri Kalyan Chandra Mohile. It may be that by some oversight the Returning Officer did not sign the scrutiny certificate at the bottom of this second nomination paper, but the fact remains that there has been no objection against this particular nomination paper (Ex. 4) and so it will be deemed to have been accepted by the Returning Officer as a valid nomination paper. We, therefore, come to the conclusion that Sri K.C. Nigam was a proposer within the meaning of section 37 R.P. Act.

It is, however, a different question whether he was competent to present the application for withdrawal at his own instance Section 37 of the R.P. Act deals with withdrawal of candidature. It lays down that, 'any candidate may withdraw his candidature by a notice in writing which..... ....shall be subscribed by him and delivered before three o'clock in the afternoon on the day fixed under clause (c) of section 30 to the Returning Officer either by such candidate in person or by his proposer, seconder or election agent who has been authorised in his behalf in writing by such candidate'. The question, therefore, is whether Sri K. C Nigam, one of the proposers for Sri Kalyan Chandra Mohile, could present the withdrawal notice without any authority. In this case the authority is there on the record. It is Ex. M. The authority reads like this. "I, authorise Khushhal Chandra Nigam to deliver my notice of withdrawal to the Returning Officer, Allahabad City (Central Constituency). Sd. Kalyan Chandra Mohile. Dated 30th November 1951." The first question for determination is whether Sri K. C. Nigam really required this authority and the second point to be decided by the Tribunal is whether this authority was really given to him by the petitioner.

The wordings of section 37, as quoted above, clearly lay down that the withdrawal notice could be presented either *'by'* the candidate in person, or *'by'* his proposer, seconder or election agent who has been authorised in this behalf in writing It was urged before us on behalf of the respondent, that the words "who has been authorised in this behalf in writing" in the section govern *election agent* only and not the proposer or seconder. The construction is very clear and we are unable to agree with that view. It will be noticed that there is the word 'or' after person, and there is a comma just after the word 'proposer', *i.e.*, there is one set of persons before the word 'or' and another set afterwards. This is clear that the candidate, when he presents the withdrawal notice in person, naturally requires no authority, but when his proposer, seconder or election agent files the withdrawal notice, then each of them require the authority. The words 'authorised in this behalf' cover not only the 'election agent', but also the words 'seconder' and 'proposer'. If the proposer and seconder required no authority, then the construction would have been slightly different, that is to say, there would have been no comma after 'proposer' and there would have been the word 'by' after 'proposer' and also after 'seconder'. We, therefore, come to the conclusion that when a proposer presents the withdrawal notice to the Returning Officer he will require a positive authority in writing from his candidate to do so. Besides this, it cannot be conceived that an election agent who can exercise almost all the rights of a candidate should require an authority to withdraw, while the proposer and seconder, who have no other powers, should require no such authority. In this case the parties too evidently thought that such an authority was necessary and so the Ex.M, in the shape of an authority, was obtained from the petitioner.

The next point is a pure question of fact. It has been mentioned above that the applicant's case is that the name of Sri K. C. Nigam on this letter of authority (Ex. M.) was written by Sri Bhargava. In this connection we must refer to the evidence of the petitioner Sri Kalyan Chandra Mohile. It is nobody's case that Sri Kalyan Chandra Mohile was present in the court compound when this authority letter was finally filled up. The petitioner's case is that at about midday he had

been asked to go to the house of the late Lala Manmohan Das, who was very ill at that time (He died subsequently). The petitioner alleges that he had signed the withdrawal notice (Ex. 9) and the authority letter (Ex. M) and had put them down on the table in front of Lala Manmohan Das. The idea was that Lala Manmohan Das would select one of the four candidates to fight the election and that he would somehow or other send the withdrawal notices of the persons whom he did not select, to the Returning Officer. The petitioner in his deposition further alleged that Lala Manmohan Das was not ready to arbitrate in the matter, but on the other hand he asked the petitioner and the other candidates who were present there, namely, respondents Nos. 4, 5 and 6, to settle amongst themselves as to who would fight the election finally. Sri Kalyan Chandra Mohile was not ready to a compromise. According to him one of the candidates also suggested that one name might be selected by means of lottery, but to this also the petitioner was not agreeable. He, therefore, left the house of Lala Manmohan Das, leaving behind the two papers, namely Exs. 9 and M, on his table. The petitioner positively asserts that he did not know what happened to these papers subsequently, nor he ever cared to enquire from either Lala Manmohan Das or from anybody else as to how these two papers reached the Returning Officer. From his statement at least this much becomes clear that he never gave any authority to anybody to present his withdrawal notice to the Returning Officer. In fact neither the withdrawal notice nor the authority letter had been filled in properly by him till then.

The statement of the petitioner has been supported by Shri Saligram Jaiswal. who too was present in the house of Lala Manmohan Das. On behalf of the respondent no witness has been examined to contradict the statements of these two witnesses. There is no reason to disbelieve at least this part of the statement of Sri Kalyan Chandra Mohile that he had only gone up to the house of Lala Monmohan Das and that later he took no part in this co-called susbequent arbitration proceeding.

On behalf of the petitioner Sri Bhargava has been examined as a witness. His statement is that at about half past two in the afternoon he was working in the court of the District Judge when Sri Sehat Bahadur came to call him and asked him to come outside the court room with the permission of the District Judge and act as an arbitrator between four candidates and decide as to who should remain standing in the ensuing election. Sri Bhargava further asserts that he took the permission of the District Judge and came out of the court room and found the three candidates namely, respondents Nos. 4, 5 and 6, near the Pan-wala shop just opposite the court room of the District Judge together with some others. There he was told about the decision of the parties and there and then he was given the four withdrawal notices of four candidates together with the blank authority letter of Sri Kalyan Chandra Mohile. Sri Bhargava could not say who had given the withdrawal notice of the petitioner to him. But he wanted to know the name of his proposer and was told that Sri K. C. Nigam was one of the proposers of the petitioner. That subsequently he saw Sri K. C. Nigam coming out of the Bar Association building, which was close by, and took it for granted that Sri K. C. Nigam was also in the know of things and was ready to accept his decision; so he entered the name of Sri K. C. Nigam on Ex.M. That subsequently the party moved towards the court of the Returing Officer and in the mean time Sri Bhargava decided that Sri Sehat Bahadur should contest the election and that the other three candidates should withdraw, *i.e.* the petitioner and the respondents Nos. 5 and 6. Sri Bhargava further alleges that after entering the court room of the Returning Officer he put the three withdrawal notices on the Returning Officer's table together with Ex.M, and the Returning Officer called the two candidates one by one, namely respondents Nos. 5 and 6 and asked if they had presented the withdrawal notices. Those two respondents answered the Returning Officer in the affirmative, and the Returning Officer accepted their withdrawal from the contest. Lastly the Returning Officer examined Sri K. C. Nigam who had reached the court room by that time and asked him if he was the proposer of Sri Kalyan Chandra Mohile. Sri K. C. Nigam also answered in the affirmative. Thus the proceeding ended on that afternoon.

Sri K. C. Nigam has also been examined as a witness. He was mostly corroborated the statement of Sri Bhargava. It will appear from the statement of these two lawyers that Sri Kalyan Chandra Mohile personally never gave any authority to Sri Bhargava to arbitrate in the matter. That his consent was not conveyed to Sri Bhargava either by any authorized agent or by any friend. In this connection, however, we must refer to the statement of Sri Mithai Lal Jaiswal (D.W.2) who was examined to disprove the statement of Sri Bhargava. D.W.2 was also a candidate from another constituency and he stated that he had come to court to withdraw his nomination. That after withdrawing his nomination he came to the civil courts and was standing in front of a sweetmeat

shop close to the shop of the Panwala where Sri Bhargava subsequently came and talked to respondents Nos. 4, 5 and 6. This witness was produced to prove that the authority of Sri Kalyan Chandra Mohile was conveyed to Sri Bhargava by his younger brother Sri Kamla Prasad Mohile. We may straightaway mention here that it is very difficult to believe the statement of this witness. First of all he had no business to come to the civil court compound, nor he had any business to stay on here for an hour and a half for nothing. The witness said that he had come to talk to the sweetmeat vendor who was a distant relation of his. It may be so, but there was no occasion for him to stay on for an hour and a half there near the shop. He had come to withdraw his candidature at about midday and should have gone away from the court long before this talk took place. His name was not mentioned when the respondent started producing his witnesses. Originally the name of one lawyer Sri Naqvi was mentioned. But unfortunately that gentleman could not come to court on account of an accident. So on the last date this witness was produced to disprove the statements of the two lawyers. We have considered the statement of this witness, who also belongs to the party of the respondent, and in our opinion he is not a reliable witness. The fact remains that either Sri Bhargava nor Sri K. C. Nigam ever received any authority from the petitioner. The brother of the petitioner was also examined in this case and he has denied the allegations of the respondent. We may mention here that Sri Kalyan Chandra Mohile belongs to the Hindu Mahasabha, while his brother Sri Kamla Prasad Mohile belongs to the Praja Socialist Party. The latter had set up a candidate at that time who had not withdrawn. So he was more interested in his own candidate rather than in the candidature of his brother who belonged to a rival party. Kamla Prasad Mohile was certainly present on that date in the court compound, but till then he could not have had any authority from his brother to convey his consent to Sri Bhargava or to authorise Sri Nigam to file his withdrawal notice. Under the circumstances it is not possible to disbelieve the statements of the two lawyers who have clearly stated that they had no information or authority from the petitioner himself. This document Ex.M. which was filled in by Sri Bhargava at his own responsibility, cannot convey the requisite authority to Sri Nigam to file the withdrawal notice before the Returning Officer. We, therefore, decide that Sri Nigam did require an authority to file such a withdrawal notice but he never had one.

Issues Nos. 2 and 3.—This issue mainly relates to the fact of presentation of the withdrawal notice of the petitioner to the Returning Officer. The question is whether the actual presentation was done by Sri K. C. Nigam, the proposer of Sri Kalyan Chandra Mohile, or by Sri G. P. Bhargava.

In this connection also we have to weigh the statements of Sri G. P. Bhargava and Sri K. C. Nigam which are before us. On another point we have accepted the statements of these two lawyers. Sri G. P. Bhargava, who had been called out from the court of the District Judge to arbitrate in the matter, clearly stated that it was he who carried the withdrawal notices of all the four candidates, *viz.* the petitioner and respondents Nos. 4, 5 & 6, to the court of the Returning Officer and there personally placed three of the notices on the table of the said officer. According to Sri Bhargava the notices were subsequently picked up by the Returning Officer one by one, who then questioned Sri Baijnath Kapoor and Sri Bhagwan Das Tandon first about their identity, and lastly when Sri Nigam appeared in the court he too was asked as to whether he was the proposer of Sri Kalyan Chandra Mohile. All three persons answered the questions of the Returning Officer to his satisfaction and thereafter Sri K. C. Nigam left the court room Sri K. C. Nigam himself was also examined by us. He is very clear on this point. He stated that he was called orginally from the Bar Association where he was studying a case by someone and was asked to go to the court room where the Returning Officer was working. As soon as he entered, the Returning Officer asked him if he was K. C. Nigam, the proposer of Sri Kalyan Chandra Mohile, and that he answered this question in the affirmative. In fact Sri Nigam corroborated the statement of Sri Bhargava on this point. The evidence of the two lawyers is absolutely clear and above board, and we see no reason to throw them away without due consideration.

As against the statement of these two lawyers we have on record the statement of the Sri Mahadeo Prasad Pathak (D.W 3) who was last examined by the respondent. Sri Mahadeo Prasad Pathak was a dummy candidate of the Congress to help respondent No. 1. In the usual course (after the nomination paper of respondent no. 1 had been found to be correct and in order) he went to the court of the Returning Officer on the 30th of November 1951, at about 12-30 p.m., and withdrew his candidature. Sri Mahadeo Prasad Pathak wants us to believe that he stayed on in the court of the Returning Officer from 12-30

up to 3 p.m. when Sri G. P. Bhargava and other candidates mentioned above entered the room. This witness stated that Sri Bhargava distributed the various papers to Sri Baijnath Kapoor, Sri Bhagwan Das Tandon and Sri K. C. Nigam inside the court room and that the three persons individually presented these papers to the Returning Officer. From this he wants to convey the idea that Sri K. C. Nigam knew everything from beforehand and that it was he who went in the court of the Returning Officer personally and purposely to present the withdrawal notice of the petitioner. We have referred to the statements of Sri K. C Nigam and Sri Bhargava more than once. We are decidedly of the opinion that the statements of these two lawyers cannot be disbelieved on the strength of the statement of a witness like Sri Mahadeo Prasad Pathak, who is a party man of the respondent No. 1, and who is supposed to have stayed in the court room of the Returning Officer for three hours only to witness if any other candidate was trying to withdraw his candidature. The statement of Sri Mahadeo Prasad Pathak is not worth believing. We find, therefore, that it was Sri G. P. Bhargava who actually presented the papers to the Returning Officer and that subsequently the Returning Officer picked them up and questioned the persons in whose name those papers stood. The Returning Officer himself came before us but his evidence on this point is rather vague. He cannot now remember what happened full one year ago.

Under this issue the question has been specifically raised as to who presented the withdrawal notice to the Returning Officer. In fact the real question is as to whether the delivery of the withdrawal notice was legally and validly made by a fully authorized person. Under issue No. 1 we have decided that Sri K. C. Nigam was not a legally authorised agent of the petitioner. We have just found that the actual delivery of the withdrawal notice was made by Sri G. P. Bhargava and not by Sri Nigam. It has been urged before us that under section 37 it is only contemplated that there should be a delivery of the papers to the Returning Officer and it is not to be seen as to who actually made the delivery. We are unable to accept this contention made on behalf of the respondent. A delivery by post cannot be accepted as proper delivery under section 37 of the Act. The Act positively lays down that the delivery of the withdrawal notice must be made either by the nominated candidate himself or by his properly authorised agent or by properly authorised proposer etc. In this case nothing of the kind happened. Neither the applicant nor the authorised agent or authorised proposer delivered the withdrawal notice to the Returning Officer. Under the circumstances we must decide these two issues against the respondent and hold that the notice of withdrawal was neither legal nor effective and also hold that its presentation was not proper.

At this stage it is necessary to point out that soon after the incident, an application (Ex.5) was made on behalf of the petitioner that somebody had wrongfully filed a withdrawal notice in his name before the Returning Officer. This application was supported by a letter which was sent to the Returning Officer by Sri K. C. Nigam. We find from the statement of the Returning Officer, who was examined by the respondent, that he called Sri Nigam and questioned him about the letter which the latter had written (Ex.6). The Returning Officer further stated that after examining Sri Nigam he came to the conclusion that the withdrawal of Sri Kalyan Chandra Mohile was no withdrawal at all. These facts go to prove further that the statement of Sri K. C. Nigam that he did not present the withdrawal notice is correct.

Issue No. 4.—The petitioner's case that the wrongful delivery of his withdrawal notice amounted to fraud, has not been pressed. We, therefore, decide the issue in the negative.

In view of the fact that the withdrawal notice was not properly delivered to the Returning Officer by any properly authorised person, it goes to show that the whole proceeding was ineffective. In fact the Returning Officer himself came to this conclusion, but somehow or other instead of deciding the point himself, he referred the matter to the Chief Electoral Officer at Lucknow who directed the Returning Officer to drop the name of Sri Kalyan Chandra Mohile from the list to be published under section 38 of the Act. By deciding the various questions of fact above we, however, come to the conclusion that the attempted withdrawal of the petitioner's nomination was no withdrawal at all and was ineffective.

Issue No. 5.—It goes without saying that the name of the petitioner was wrongly excluded from the list of validly nominated candidates published under section 38 of the Act and the result of the election must be deemed to have been materially affected thereby within the meaning of section 100(1)(c) of the Act.

Issue No. 6.—As the question of fraud was given up by the petitioner, this issue does not now arise.

Issue No. 7.—The exclusion of the name of the petitioner from the list of duly nominated candidates published under section 38 of the Act has not only prejudiced the petitioner Sri Kalyan Chandra Mohile personally but has also materially affected the result of the election. He, had, therefore, a good cause of action to file this petition.

Issue No. 8.—The petitioner is, therefore, entitled to the declaration that the election of 1951-52 to the U.P. Legislative Assembly from Allahabad City (Central) Constituency is wholly void.

Accordingly we hereby declare that the above-mentioned election is wholly void and therefore the seat shall be deemed to be vacant. We further direct that the respondent No. 1 shall pay Rs. 300 as costs to the petitioner and shall bear his own costs. The security money shall be refunded to the petitioner.

(Sd.) V. G. OAK, I.C.S., *Chairman.*

(Sd.) N. N. MUKERJI, *Member.*

(Sd.) B. R. AVASTHI, *Member.*

[No. 19/218/52-Elec.III.]

The 12th January, 1953.

P. S. SUBRAMANIAN,
Officer on Special Duty.

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